

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.211 OF 2006**

Shivram Mahadeo Barate & Anr.

...Appellants

Vs.

Pune Municipal Corporation

...Respondent

Mr.P.B.Jgtap and Mr.Ashok Tajane for the Appellants

None for the Respondents.

**CORAM: A.S.OKA, J.
DATED: MARCH 18,2006.**

P.C.:

1. Heard the learned Advocate for the Appellants. The Appellants are the unsuccessful Plaintiffs. A notice was issued by the Respondent-Corporation under Section 260(1) of the Bombay Provincial Municipal Corporations Act, 1949. (hereinafter referred to the said Act of 1949) on 8th January 1993 calling upon the Appellants to show cause as to why building admeasuring 50' X 40' should not be demolished as the construction thereof was started without obtaining permission. No reply was admittedly filed to the said notice and therefore, by a further notice dated 30th January 1993 the Respondent-Corporation directed demolition of the structure.

2. The learned Advocate for the Appellants submitted that no reply was sent by the Appellants as the original Plaintiff personally met to the Officers of the Corporation and satisfied them that the construction was very old made even before the land in question became part of the limits of the Respondent-Corporation. He submitted that the Respondent has not led any evidence to show that the offending structure was newly constructed and the evidence of the Appellants in that

behalf has gone unchallenged. He, therefore, submitted that the decree ought to have been passed in favour of the Appellants.

3. I have considered the submissions. No reply was sent by the Appellants to show cause notice raising a contention that the construction was very old. That is the reason why the second notice of demolition was sent by the Respondent-Corporation. Apart from examining himself, the original Plaintiff has not led evidence of any other person to show that the offending structure was in existence on the date on which the land was included in the limits of the Respondent-Corporation. Reliance was placed by the Appellants on order dated 5th July 1978 passed by the Collector, Pune allotting the said land in favour of the father of the Appellants. The order of allotment is in respect of the plot. There is no reference to the structure in the said order. No documentary evidence was produced on record to show that the offending structure existed even before the land in question was incorporated in the limits of the Respondent-Corporation. If this is the factual position and if admittedly no permission has been obtained by the Appellants from the Respondent-Corporation for construction of the structure, the Courts below have rightly come to the conclusion that notice was legal and valid. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.